

SERVICE DATE – NOVEMBER 5, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42134

NATIONAL RAILROAD PASSENGER CORPORATION–SECTION 213 INVESTIGATION
OF SUBSTANDARD PERFORMANCE ON RAIL LINES OF CANADIAN NATIONAL
RAILWAY COMPANY

Decided: November 2, 2012

On January 19, 2012, the National Railroad Passenger Corporation (Amtrak) filed a petition requesting that the Board initiate an investigation pursuant to § 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. § 24308(f), regarding the alleged “substandard performance of Amtrak passenger trains on rail lines owned by Canadian National Railway Company and its subsidiaries, Grand Trunk Western Railway Company and Illinois Central Railroad Company” (collectively, CN).

On January 26, 2012, CN requested a 30-day extension to file an answer to Amtrak’s petition, and on January 31, 2012, the Board granted that extension request. On March 9, 2012, CN filed an answer to Amtrak’s petition. In its answer, CN proposed a detailed procedural framework for investigating and ruling on Amtrak’s complaint. Also on March 9, 2012, CN filed a motion to hold the proceeding in abeyance until after the United States District Court for the District of Columbia rules on the pending cross-motions for summary judgment in Association of American Railroads v. Department of Transportation, No. 11-cv-1499 (D.D.C. filed Aug. 19, 2011), a case challenging the constitutionality of PRIIA. On May 31, 2012, the District Court issued a ruling in favor of the United States Department of Transportation in that case, finding PRIIA constitutional. However, on June 22, 2012, the Association of American Railroads (AAR) appealed that decision to the United States Court of Appeals for the District of Columbia Circuit, and that appeal is currently pending.

On March 27, 2012, Amtrak and CN filed a joint motion requesting Board supervised mediation. Amtrak and CN requested specifically that (1) the Board appoint a mediator, (2) the proceeding be held in abeyance for 90 days while the mediation is pursued, subject to either party’s right at any time to reactivate normal agency procedures upon notice, and (3) if mediation does not lead to consensual resolution, the Board extend Amtrak’s time to respond to CN’s motion for abeyance until 20 calendar days from the date the Board serves notice that normal agency proceedings are reactivated.

On April 4, 2012, the Board issued a decision granting the request for mediation and holding the proceeding in abeyance until July 3, 2012, for that purpose. At the parties’ request,

the Board extended the abeyance period three times to allow mediation to continue. The last of these extensions ended on October 4, 2012.

This decision gives notice that agency proceedings have been reactivated. The parties are directed to meet and confer on an appropriate procedural framework to govern the adjudication of this case. As part of that discussion, given that AAR's challenge to PRIIA is no longer before the U.S. District Court but rather the U.S. Court of Appeals (and thus the relief requested in CN's motion for abeyance technically is moot), CN should indicate whether it intends to press its abeyance motion during the pendency of the appeal; if so, the parties should confer on a deadline for Amtrak's response to that motion. The parties are directed to submit to the Board in writing (jointly, if possible) a proposed procedural framework by November 26, 2012.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Agency proceedings have been reactivated.
2. Amtrak and CN are directed to meet and confer as discussed above and submit to the Board in writing, jointly, if possible, a proposed procedural framework by November 26, 2012.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.